

# EXHIBIT C

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

EMS USA, INC.

§  
§  
§  
§  
§

VS.

CIVIL ACTION NO. 4:16-CV-01443

THE TRAVELERS LLOYDS  
INSURANCE COMPANY

§  
§  
§  
§

DEFENDANT'S NOTICE OF REMOVAL  
EXHIBIT C: COPIES OF PLEADINGS ASSERTING  
CAUSES OF ACTION AND ALL ANSWERS TO SUCH PLEADINGS

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW, The Travelers Lloyds Insurance Company, the defendant in the above entitled and numbered cause, and files copies of all pleadings asserting causes of action and all answers to such pleadings as required by Local Rule 81.2.



C O R P O R A T I O N S E R V I C E C O M P A N Y®

SLM / ALL

Transmittal Number: 15124522  
Date Processed: 05/09/2016

## Notice of Service of Process

**Primary Contact:** Pamela Beyer  
The Travelers Companies, Inc.  
385 Washington Street, MC 515A  
Saint Paul, MN 55102

**Entity:** The Travelers Lloyds Insurance Company  
Entity ID Number 2380750

**Entity Served:** Travelers Lloyds Insurance Company

**Title of Action:** Ems USA, Inc vs. The Travelers Lloyds Insurance Company

**Document(s) Type:** Citation/Petition

**Nature of Action:** Contract

**Court/Agency:** Harris County District Court, Texas

**Case/Reference No:** 2016-28193

**Jurisdiction Served:** Texas

**Date Served on CSC:** 05/06/2016

**Answer or Appearance Due:** 10:00 am Monday next following the expiration of 20 days after service

**Originally Served On:** CSC

**How Served:** Personal Service

**Sender Information:** David S. Lynch  
713-651-0111

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**To avoid potential delay, please do not send your response to CSC**

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RECEIPT NUMBER 0.00  
 TRACKING NUMBER 73242793 ATY

CAUSE NUMBER 201628193

**PLAINTIFF:** EMS USA INC  
 vs.  
**DEFENDANT:** TRAVELERS LLOYDS INSURANCE COMPANY

In The 80th  
 Judicial District Court of  
 Harris County, Texas

**CITATION CORPORATE**

**THE STATE OF TEXAS**  
**County of Harris**

TO: TRAVELERS LLOYDS INSURANCE COMPANY (A TEXAS CORPORATION) BY SERVING  
 ITS REGISTERED AGENT CORPORATION SERVICE COMPANY AND DAVID M. RYAN 16  
 211 EAST 7TH STREET SUITE 620 AUSTIN TX 78701 CARLOS B. LOPEZ  
CONSTABLE, PCT 5, TRAVIS COUNTY, TEXAS  
BY:

Attached is a copy of PLAINTIFF'S ORIGINAL PETITION.

DEPUTY

This instrument was filed on the 2nd day of May, 2016, in the  
 above cited cause number and court. The instrument attached describes the claim against you.

**YOU HAVE BEEN SUED;** you may employ an attorney. If you or your attorney do not file a written answer with the  
 District Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of 20 days after you were  
 served this citation and petition, a default judgment may be taken against you.

**TO OFFICER SERVING:**

This Citation was issued under my hand and seal of said Court, at Houston, Texas, this 3rd day of  
May, 2016.



*Chris Daniel*

CHRIS DANIEL, District Clerk

Harris County, Texas

201 Caroline, Houston, Texas 77002

P.O.Box 4651, Houston, Texas 77210

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**OFFICER/AUTHORIZED PERSON RETURN**

I received this citation on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_M., endorsed  
 the date of delivery thereon, and executed it at \_\_\_\_\_,

(STREET ADDRESS) \_\_\_\_\_, \_\_\_\_\_ (CITY)

in \_\_\_\_\_ County, Texas on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_M.,

by delivering to \_\_\_\_\_, by delivering to its  
 (THE DEFENDANT CORPORATION NAMED IN CITATION)

(REGISTERED AGENT, PRESIDENT, or VICE-PRESIDENT), in person, whose name is \_\_\_\_\_,

a true copy of this citation, with a copy of the \_\_\_\_\_ Petition attached,  
 (DESCRIPTION OF PETITION, E.G., "PLAINTIFF'S ORIGINAL")

and with accompanying copies of \_\_\_\_\_.

(ADDITIONAL DOCUMENTS, IF ANY, DELIVERED WITH THE PETITION)

I certify that the facts stated in this return are true by my signature below on the Carroll day of May, 2016

FEE: \$ \_\_\_\_\_ By: \_\_\_\_\_ Constable Pct. 5, Travis County, Texas

(SIGNATURE OF OFFICER)



Printed Name: \_\_\_\_\_

Affiant Other Than Officer As Deputy for: \_\_\_\_\_ (PRINTED NAME & TITLE OF SHERIFF OR CONSTABLE)

On this day, \_\_\_\_\_, known to me to be the person whose signature  
 appears on the foregoing return, personally appeared. After being by me duly sworn, he/she stated that this citation was  
 executed by him/her in the exact manner recited on the return.

SWORN TO AND SUBSCRIBED BEFORE ME, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

Notary Public

5/2/2016 9:15:42 AM

Chris Daniel - District Clerk Harris County

Envelope No. 10396413

By: Ariana Garibay

Filed: 5/2/2016 9:15:42 AM

# 2016-28193 / Court: 080

CAUSE NUMBER \_\_\_\_\_

EMS USA, INC. § IN THE DISTRICT COURT OF  
§  
§  
VS. § HARRIS COUNTY, TEXAS  
§  
THE TRAVELERS LLOYDS §  
INSURANCE COMPANY § JUDICIAL DISTRICT

## PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW EMS USA, INC., Plaintiff, complaining of THE TRAVELERS LLOYDS INSURANCE COMPANY, Defendant, and for cause of action would respectfully show the Court as follows:

## **DISCOVERY CONTROL PLAN**

I.

Plaintiff requests that discovery be conducted under Level 3 of the Texas Rules of Civil Procedure 190 and further requests that the Court order a discovery control plan according to such rule.

## **PARTIES**

II.

Plaintiff EMS USA, Inc. is a Delaware corporation having its principal place of business in Houston, Harris County, Texas.

III.

Defendant The Travelers Lloyds Insurance Company is a Texas corporation having its principal place of business in the State of Texas and may be served with service of process by

serving its agent for service of process in the state of Texas, Corporation Service Company, 211 East 7<sup>th</sup> Street, Suite 620, Austin, Texas 78701.

#### **JURISDICTION AND VENUE**

IV.

The amount in controversy is within the jurisdictional limits of this Court. Plaintiff seeks relief in excess of \$1,000,000.

V.

Venue is proper in Harris County, Texas, in that EMS USA, Inc. is a corporation having its principal place of business in Harris County, Texas. TEX. CIV. PRAC. & REM. CODE §15.032. Further, Harris County is the county in which all or a substantial part of the events or omissions giving rise to this claim occurred. TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1).

#### **FACTS**

VI.

Defendant issued a builders risk policy of insurance to EMS Holdings I, Inc., policy number QT-660-8070X278-TLC-15, with effective dates from September 1, 2015 to September 1, 2016 (the “Policy”). Plaintiff is a named insured under the Policy.

VII.

Plaintiff entered into a contract with Martin Operating Partnership, L.P. to construct a natural gas pipeline in Jefferson County, Texas. Plaintiff subcontracted with Isaacs Directional Drilling Co. to provide a horizontal directional drill across the tract of land where the pipeline was to be constructed. On or about November 13, 2015, the pipeline became stuck in the hole. Attempts to remove the pipeline were unsuccessful. Plaintiff sustained a loss in the amount of

One Million Nine Hundred Twenty Nine Thousand Two Hundred Twenty Three and 31/100 Dollars (\$1,929,223.31) (the "Loss").

VIII.

The project was covered by the Policy issued by Defendant. Plaintiff has filed three proofs of claim under the Policy for the Loss. Defendant has denied the proofs of claim. Plaintiff is entitled to recover the sum of One Million Nine Hundred Twenty Nine Thousand Two Hundred Twenty Three and 31/100 Dollars (\$1,929,223.31) from Defendant under the terms of the Policy.

**CAUSES OF ACTION**

IX.

Defendant has breached the contract of insurance. As a result, Plaintiff has sustained damages in the amount of One Million Nine Hundred Twenty Nine Thousand Two Hundred Twenty Three and 31/100 Dollars (\$1,929,223.31).

X.

Defendant denied Plaintiff's claim under the Policy without making a reasonable investigation of the claim. Further, Defendant failed to attempt in good faith to effect a prompt, fair, and equitable settlement of the claim when liability had become reasonably clear. TEX. INS. CODE §§ 542.003 (3) and (4). Defendant has received all reasonable material and information to enable Defendant to accept the claim under the Policy. Despite this, Defendant has failed to pay the claim as required by the Policy within the required time period. TEX. INS. CODE § 542.056, 542.057 and 542.058. Defendant is liable to Plaintiff for interest on the amount of the claim at the rate of eighteen percent (18%) per year as damages. TEX. INS. CODE § 542.060.

XI.

Plaintiff has retained attorneys to prosecute this claim against Defendant. Plaintiff is entitled to recover reasonable and necessary attorneys fees incurred in the prosecution of this claim. TEX. CIV. PRAC. & REM. CODE § 38.001; TEX. INS. CODE §542.060. Further, Plaintiff is entitled to recover prejudgment and post judgment interest on the sums awarded in this lawsuit.

XII.

All conditions precedent to Plaintiff's right to recover have been performed, have occurred, or have been waived. TEX. R. CIV. P. 54.

**PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, EMS USA, Inc., Plaintiff, prays that The Travelers Lloyds Insurance Company, Defendant, be cited to appear and answer herein and that upon trial Plaintiff recover judgment against Defendant for the following:

- (a) The sum of One Million Nine Hundred Twenty Nine Thousand Two Hundred Twenty Three and 31/100 Dollars (\$1,929,223.31);
- (b) Reasonable and necessary attorneys' fees incurred in the prosecution of this lawsuit;
- (c) Prejudgment interest at the rate of eighteen percent (18%);
- (d) Prejudgment and post judgment interest at the legal rate;
- (e) Costs of Court; and
- (f) Any other relief, general or special, at law or in equity, to which Plaintiff may otherwise show itself to be justly entitled.

Respectfully submitted,

COATS | ROSE

By:

David S. Lynch  
Texas Bar No. 12725825  
[dlynch@coatsrose.com](mailto:dlynch@coatsrose.com)  
Daniel F. Shank  
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9 Greenway Plaza, Suite 1100  
Houston, Texas 77046  
(713) 651-0111  
(713) 651-0220 (facsimile)

ATTORNEYS FOR PLAINTIFF  
EMS USA, INC.

**CAUSE NO. 201628193**

**EMS USA, INC.**

**V.**

**THE TRAVELERS LLOYDS  
INSURANCE COMPANY**

**IN THE DISTRICT COURT OF  
HARRIS COUNTY, TEXAS  
80TH JUDICIAL DISTRICT**

**DEFENDANT'S ORIGINAL ANSWER**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, The Travelers Lloyds Insurance Company, the defendant in the above entitled and numbered cause, and files this its original answer to the plaintiff's original petition on file herein, and in support thereof would respectfully show the Court as follows:

I.

The defendant hereby generally denies the allegations contained in the plaintiff's petition on file herein pursuant to Rule 92 of the Texas Rules of Civil Procedure, and thus asserts its privilege of insisting that such allegations be proven by a preponderance of credible evidence.

II.

Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, the defendant notifies all parties to this lawsuit of the defendant's intent to introduce as evidence at any pretrial proceeding or at trial any document produced by any party in discovery in this lawsuit.

III.

The defendant specifically reserves the right to amend its answer to plead any affirmative defenses or other matters that must be specially pled and to assert any counterclaims or third-party claims it may have after discovery in this case is complete.

WHEREFORE, PREMISES CONSIDERED, the defendant, The Travelers Lloyds Insurance Company, moves and prays the Court that upon trial hereof, the plaintiff recover nothing, and that the defendant go hence with its costs, and for such other and further relief, both general and special, legal and equitable, to which the defendant may show itself justly entitled to receive.

Respectfully submitted,

ORGAIN BELL & TUCKER, LLP  
P O Box 1751  
Beaumont, TX 77704-1751  
(409) 838-6412  
(409) 838-6959 facsimile

/s/ Greg C. Wilkins  
Greg C. Wilkins  
State Bar No. 00797669  
gcw@obt.com  
Warren B. Wise  
State Bar No. 24075299  
wwise@obt.com

ATTORNEYS FOR DEFENDANT,  
THE TRAVELERS LLOYDS  
INSURANCE COMPANY

**CERTIFICATE OF SERVICE**

I do hereby certify that on the 24th day of May, 2016, I electronically filed the foregoing with the Harris County Clerk via eFile Texas which will send notification of such filing to each counsel of record.

/s/ Greg C. Wilkins